

Update: Managing a Trial Under The Controlled Substances Act

CHAPTER 9

Double Jeopardy in Controlled Substance Cases

Note: The Supreme Court decision summarized below will likely affect most of the information found in Chapter 9. The chapter will be updated as part of MJJI's scheduled update of this benchbook in its entirety. Pending those wholesale revisions, the following case summary is provided to alert the reader to this case's expansive impact on existing case law.

The Michigan Supreme Court readopted the “same-elements” test to determine whether the prohibition against double jeopardy is violated when multiple charges are brought against a defendant for conduct related to a single criminal transaction. *People v Nutt*, ___ Mich ___, ___ (2004). In *Nutt*, the Court overruled its decision in *People v White*, 390 Mich 245 (1973), where the Court disapproved of the “same-elements” test in favor of the “same transaction” test as the means of resolving double jeopardy issues. The “same transaction” test generally prohibited serial prosecutions of a defendant for entirely different crimes arising from a single criminal episode or “transaction.” *Nutt, supra*, ___ Mich at ___. Until the *White* decision in 1973, Michigan courts had interpreted the prohibition against double jeopardy as precluding multiple prosecutions of a defendant for crimes involving identical elements. *Nutt, supra*, ___ Mich at ___.

In *Nutt*, the defendant pleaded guilty in a Lapeer County Court of one count of second-degree home invasion. *Nutt, supra*, ___ Mich at ___. Later, the defendant was bound over for trial in Oakland County on the charge of receiving and concealing a stolen firearm—the firearm was obtained in the defendant's admitted participation in the Lapeer County theft. *Nutt, supra*, ___ Mich at ___. The defendant moved to dismiss the receiving and concealing charge because *White* required the state “to join at one trial all charges arising from a continuous time sequence that demonstrated a single intent and goal.” *Nutt, supra*, ___ Mich at ___.

The Michigan Supreme Court concluded that it had incorrectly construed the meaning of the constitutional phrase “same offense” in its *White* decision because the ratifiers of the 1963 Constitution intended that “same offense” be

accorded the meaning given its federal counterpart and that it be interpreted consistently with “state and federal double jeopardy jurisprudence as it then existed.” *Nutt, supra*, ___ Mich at ___. The Court stated that the *White* Court “strayed from [the ratifiers’] intent when it adopted the same transaction test” and explained that the remedy for that error required a “return to the same-elements test, which had been consistently applied in this state until its abrogation . . . in 1973 [footnote omitted].” *Nutt, supra*, ___ Mich at ___.

Michigan’s return to the same-elements test signifies a return to “the well-established method of defining the Fifth Amendment term ‘same offence’” known as the *Blockburger* test. *Nutt, supra*, ___ Mich at ___; *Blockburger v United States*, 284 US 299, 304 (1932). The *Blockburger* test “focuses on the statutory elements of the offense. If each requires proof of a fact that the other does not, the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.” *Nutt, supra*, ___ Mich at ___, quoting *Iannelli v United States*, 420 US 770, 785 n 17 (1975).

The same-elements test, as dictated directly by the *Blockburger* Court, provides:

“The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Blockburger, supra*, 284 US at 304; *Nutt, supra*, ___ Mich at ___.

As applied to the *Nutt* case, the Court determined that the defendant could properly be tried for the receiving and concealing charge even though she pleaded guilty to the offense from which the stolen property was obtained. *Nutt, supra*, ___ Mich at ___. Because the elements required to convict her for each offense were not identical, the defendant’s protection from double jeopardy was not violated. *Nutt, supra*, ___ Mich at ___. Specifically, the defendant’s conviction for second-degree home invasion required proof that (1) the defendant entered a dwelling by breaking or entered without permission, and (2) the defendant entered with the intent to commit a felony or larceny in the dwelling. *Nutt, supra*, ___ Mich at ___. The defendant’s conviction for receiving and concealing a stolen firearm required proof that (1) the defendant received, concealed, stored, bartered, sold, disposed of, pledged, or accepted as security for a loan, (2) a stolen firearm or stolen ammunition, and (3) the defendant knew that the firearm or ammunition was stolen. *Nutt, supra*, ___ Mich at ___. The Court explained:

“Clearly, there is no identity of elements between these two offenses. Each offense requires proof of elements that the other does not. Because the two offenses are nowise the same offense under either the Fifth Amendment or art 1, § 15, we affirm the result reached by the Court of Appeals majority and hold that defendant is not entitled to the dismissal of the Oakland County charge.” *Nutt, supra*, ___ Mich at ___.